

1 COURT OF COMMON PLEAS

2 HAMILTON COUNTY, OHIO

3 - - -

4 STATE OF OHIO, :

5 Plaintiff. :

6 VS. :Case Number B1003262

7 RUBEN JORDAN, :Appeal Number C1100833

8 Defendant. :Volume VIII of X

9 - - -

10 TRANSCRIPT OF PROCEEDINGS

11 - - -

12 APPEARANCES:

13 Seth S. Tieger, Esq.

14 Megan E. Shanahan, Esq.

15 On behalf of the State of Ohio.

16 William P. Whalen, Jr., Esq.

17 Amy R. Williams, Esq.

18 On behalf of the Defendant.

19 BE IT REMEMBERED that upon the Jury

20 Trial of this cause, on January 24, 2011, before

21 the Honorable NADINE L. ALLEN, a judge of the

22 said court, the following proceedings were had,

23 to wit:

24

1 PROCEEDINGS, January 24, 2011

2 THE COURT: Good morning. We are
3 now ready for the closing argument.

4 MR. TIEGER: Yes, Your Honor.

5 THE COURT: And jury instructions,
6 so we can bring in the jury at this time.

7 And I would ask everybody who's back
8 there observing, and for all the
9 participants to please check your cell
10 phone right now. There will be no noise
11 in this courtroom while this is going on.
12 So, take it and do not have it in your
13 hands either because we don't allow any
14 picture taking, texting, e-mails or use
15 of a cell phone. I do have the authority
16 to confiscate it and do other things if
17 there is continued violations of that, so
18 let me check my own.

19 (The jury entering the courtroom at
20 9:20 a.m.)

21 THE COURT: You may all be seated.
22 And, good morning, I'm so glad you all
23 made it here safely in this weather, and
24 we appreciate that.

25 At this point, we are going to be

1 hearing the closing argument of each
2 side, from the prosecution and the
3 defense, followed by -- and, actually,
4 the state does have the chance to also
5 address you in what we call rebuttal
6 argument, rebuttal closing argument.

7 Following that will be the
8 instructions of the jury, and then you
9 will be deliberating this morning. So,
10 we'll start with the prosecution. You
11 ready to proceed?

12 MS. SHANAHAN: Yes, Your Honor.
13 Thank you.

14 May it please the Court, ladies and
15 gentlemen of the jury: I want to thank
16 you again on behalf of the State of Ohio
17 and the defense, the court system in this
18 case. We really value the time that you
19 dedicate, the fact that you come down
20 here and do your duty as jurors.

21 Please believe us that any delays
22 in these proceedings, or any time that
23 you are a juror, they are necessary. We
24 really do respect your time, and we thank
25 you and can tell that you pay attention

1 and that you listen. You've heard all of
2 the facts and all of the evidence, and we
3 appreciate your attention to this very
4 important matter.

5 Ladies and gentlemen, at the start
6 of this case, I read to you the
7 indictment. The indictment is not
8 evidence, but it tells you what the
9 defendant has been charged with. The
10 Judge is going to tell you all of the
11 instructions, the law in this case, but I
12 will tell you now that the burden is on
13 myself and Mr. Tieger, the State of Ohio,
14 to prove this case to you beyond a
15 reasonable doubt.

16 Reasonable doubt means that you use
17 your reason and common sense. It's very
18 important in this case that you apply
19 your reason and common sense while you're
20 deliberating.

21 Ladies and gentlemen, the defendant
22 is charged with aggravated murder, that
23 he purposely and with prior calculation
24 and design caused the death of Victor
25 Davis. Those are the elements the Court

1 is going to tell you that the State has
2 to prove to you beyond a reasonable
3 doubt. Applying reason and common sense
4 that Ruben Jordan purposely, and with
5 prior calculation and design, caused the
6 death of Victor Davis.

7 Ladies and gentlemen, you're also
8 going to receive instructions on a lesser
9 charge, a lesser charge of murder.

10 Murder is all of the same elements of
11 aggravated murder minus the prior
12 calculation and design. That's not what
13 we have in this case, because as the
14 Judge will tell you, prior calculation
15 and design does not have a necessary time
16 period, a definite time period employed.

17 You don't have to plan something out for
18 a week, two weeks, three days, one day.

19 You don't have to write down your plan,
20 it's just that there was some
21 forethought, there was thought before he
22 went and committed this crime.

23 In other words, ladies and
24 gentlemen, that it wasn't done in the
25 heat of passion, that you -- we were in a

1 fight and you pulled a gun and shot
2 somebody, that you had to think about
3 what you were doing.

4 Certainly, in this case,
5 considering the facts and evidence that
6 Ruben Jordan went to the motorcycle club
7 in search of Victor Davis, that he waited
8 on him, that he followed him home, that
9 he crossed that open lot and he shot
10 Victor Davis three times certainly there
11 is prior calculation and design. This is
12 not the lesser count of murder, this is
13 the count as charged in the indictment of
14 aggravated murder that Ruben Jordan
15 purposely, and with prior calculation and
16 design, caused the death of Victor Davis.

17 There are gun specs on this case.
18 You're going to be told that the
19 defendant, if you find he had the gun
20 under his control, that he used it in the
21 commission of this crime, he should be
22 found guilty of gun specs. Clearly, a
23 gun was used in this case. That's really
24 not at issue. Victor Davis was murdered
25 by means of a handgun. You heard the

1 coroner and the crime lab people testify
2 as to that fact.

3 Count 3 being having weapons under
4 disability, it's been stipulated to that
5 the defendant was under a disability. He
6 has five prior convictions for
7 drug-related offenses which means he's
8 under a disability, that he's precluded
9 from owning or carrying or having or
10 using a firearm. The fact that he did it
11 is not stipulated to, but those prior
12 offenses are stipulated to. So, if you
13 find that the defendant used a firearm to
14 kill Victor Davis, then, clearly, he had
15 a weapon while he was under a disability.

16 Ladies and gentlemen, he,
17 obviously, knew he had been convicted of
18 these five prior offenses. He knew he
19 shouldn't be carrying a gun or using a
20 gun. What we do know from what's been
21 presented to you in this case is that on
22 October 31st, 2008, at 11:27 p.m., Victor
23 Davis was gunned down outside his home.
24 He was shot three times, and he died
25 there in the street.

1 On October 31st, 2008, Ruben Jordan
2 had been within seven feet of where
3 Davis's body came to rest after this
4 violence was inflicted upon him. On
5 October 31st, 2008, we know that Ruben
6 Jordan knew that Victor Davis was the
7 only eyewitness to the murder of Brian
8 Austin, the murder that Kareem Gilbert,
9 Ruben Jordan's son, committed.

On October 31st, 2008, we know that
Dean Shade heard shots as he laid in his
third and fourth floor apartment above
the street where Victor Davis was gunned
down. We know that Dean Shade looked out
and he saw a bald man, who had the same
build as Ruben Jordan, standing over
Davis's body. That person then turned
and fled across the open lot.

19 Ladies and gentlemen, up to this
20 point, Victor Davis had lived down there
21 in Over-the-Rhine, as far as we know,
22 without any violence being inflicted upon
23 him. And you're being asked to believe
24 that it was purely coincidental that two
25 weeks after being the only eyewitness to

1 a street murder, he, himself, gets
2 murdered in cold blood, with no apparent
3 reason there out on the street.

4 But you're expected to believe that
5 that's purely coincidence. You're
6 expected to believe that Ruben Jordan was
7 there 12 hours before, 12 hours, and he
8 spit right where Victor Davis's body came
9 to rest after he was brutally murdered.
10 You're expected to believe that that spit
11 stayed fresh, even though it had been
12 laying there for 12 hours on a 72-degree
13 day. You're expected to believe that
14 Dean Shade who saw a bald man with the
15 same build as that man run from the
16 scene, but it wasn't him, even though his
17 DNA is right there, even though the
18 person murdered is the only eyewitness to
19 his son's crime.

20 You're expected to believe none of
21 those things happened, that these things
22 are completely unrelated, that Ruben
23 Jordan was down there 12 hours before and
24 spit on the ground just where Victor came
25 to rest.

1 But the evidence doesn't stop
2 there, ladies and gentlemen, the most
3 credible witness of all is Kevin Heard.
4 He had no reason to come here and
5 testify. He left Cincinnati because he
6 had been shot. He left Cincinnati, and
7 yet he came back here risking his own
8 safety to testify in a case against Ruben
9 Jordan. Why? Ask yourself why. What is
10 his motive? He's getting no case
11 consideration, he's not paid, he's not
12 asking for fines to be forgiven, he got
13 nothing. He did it because it was the
14 right thing to do.

15 He came back here risking his own
16 safety to tell you, ladies and gentlemen,
17 that in early 2009, as Kareem Gilbert sat
18 locked up in the jail for the murder of
19 not only Brian Austin but also Victor
20 Davis, that a crackhead who buys from him
21 ultimately, we find out his given name
22 being Ruben Jordan, that Ruben Jordan
23 told him I did something and my son is
24 locked up for it. I killed a witness to
25 a crime that my son committed. I shot

1 him. That's an awful lot of detail. The
2 fact that he's freaking out, it's about
3 March or April of 2009, because his son
4 is sitting in jail for a crime that he,
5 himself, committed, that that crime
6 involved a shooting of an eyewitness to
7 the murder his son committed.

8 why, you have to ask yourself,
9 would Kevin Heard have made that up?
10 How? More importantly, why would he risk
11 himself to come here and testify with no
12 gain? He's a former drug dealer, because
13 guess what, ladies and gentlemen, you're
14 smart enough to know that Ruben Jordan
15 isn't going to walk into Findlay Market
16 and spill his guts to some homemaker from
17 Blue Ash who happens to be down there
18 shopping about murdering an eyewitness so
19 that his son could get off.

20 Ladies and gentlemen, birds of a
21 feather. Ruben Jordan is a crackhead.
22 He hangs around crack dealers. Kevin
23 Heard is a crack dealer. But you still
24 have to remember Kevin Heard got nothing
25 for coming here to testify.

1 Keep in mind all of the intricate
2 details that Kevin Heard had, and how he
3 would have gotten that information. What
4 about Kareem Gilbert? Nice little stunt
5 that he pulled here. He tells the police
6 one thing, the prosecutors, the Court, he
7 tells us all it's one way, then he comes
8 here and he takes the stand and he says
9 it's a whole different way. Why would he
10 do that? Why? You have to ask yourself,
11 why would he risk things that he
12 received?

13 Let me tell you, ladies and
14 gentlemen, people like Kareem Gilbert
15 don't think like you and I. People like
16 Kareem Gilbert are ignorant. They are
17 shortsighted, because people like Kareem
18 Gilbert have absolutely no concept of a
19 future. And when I say a future, ladies
20 and gentlemen, I don't mean I'm going to
21 get married some day and have children.
22 I mean tomorrow. People like Kareem
23 Gilbert have no concept of their actions
24 and the reactions and what is going to
25 happen tomorrow. That's how they live.

1 That's why he was willing to pull the
2 stunt that he pulled. He thinks he's
3 smarter than you. He's smarter than the
4 Court. He's smarter than the prosecutor
5 and he's smarter than the police.

6 You saw him, you're told to judge
7 the credibility of the witnesses as they
8 appear on the stand and their behavior,
9 their manner of testifying. He sat up
10 there and laughed. He covered his face
11 repeatedly to hide his smile, but he
12 couldn't keep it from you the whole time,
13 you saw him. Do you honestly believe
14 that when he took the stand he was
15 telling the truth? This is a game to
16 people like Kareem Gilbert. It's a joke,
17 and he thinks that he got the last laugh
18 with the little stunt that he pulled.

19 Ladies and gentlemen, he was wrong,
20 because at the end of the day you would
21 have to set aside all reason and all
22 common sense, throw out all of the other
23 evidence, the direct and circumstantial
24 evidence, disregard Dean Shade, Kevin
25 Heard, Victor Davis, Jr., Detective Ron

1 Avant, the criminalist, the police, the
2 crime lab employees, and the hard fact
3 that there is no way, ladies and
4 gentlemen, applying reason and common
5 sense, there is no way that that spit
6 laid in the street on blacktop for 12
7 hours, on a 70-degree day for 12 hours,
8 and it remained in that condition and
9 just so happened to be seven feet from
10 where Victor Davis died, where he was
11 murdered.

12 And it just so happened that there
13 is a one in 8 quintillion, 432
14 quadrillion chance that it's Ruben
15 Jordan. It's Ruben Jordan's spit.
16 That's more than the population of the
17 Earth. You would have to forget all of
18 that. You would have to suspend all
19 reason and all common sense and believe
20 that that's what happened on
21 October 31st, 2008 in order to find Ruben
22 Jordan not guilty of this crime.

23 Ladies and gentlemen, Ruben Jordan
24 shot and killed Victor Davis. He planned
25 it, he hunted Victor down like an animal.

1 He carried out his plan thinking the
2 streets were the streets. And if a
3 witness ends up dead, that just means
4 that witnesses aren't going to come
5 forward, then cases get dismissed. But
6 the streets weren't the streets this
7 time, because Ruben Jordan, just like his
8 son, is ignorant and sloppy and he left
9 hard evidence, he left that DNA at the
10 crime scene, and now it's up to you.

11 Ladies and gentlemen, the state is
12 confident that when you consider all of
13 the evidence, direct, circumstantial,
14 testimonial, that you will convict Ruben
15 Jordan of aggravated murder, gun specs
16 and the weapons under disability as
17 charged in the indictment. Thank you.

18 THE COURT: All right. Mr. Whalen?

19 MR. WHALEN: Could we approach the
20 bench for just a minute?

21 THE COURT: Okay. In the presence
22 of the jury?

23 (Unreported sidebar conference.)

24 THE COURT: You may proceed,
25 Counsel.

1 MR. WHALEN: Thank you, Your Honor.
2 I also, and my client and my co-counsel,
3 thank you for all the attention you have
4 given us. I know that this has been an
5 unusual situation, both with the weather
6 and the case that you're hearing, and we
7 have taken you to an area where you are
8 not accustomed to in hearing things about
9 what goes on in Cincinnati here that you
10 can find it hard to relate to, I would
11 hope.

12 When the Judge charges you, she's
13 going to tell you that you have to find
14 beyond a reasonable doubt that Ruben
15 Jordan committed this crime, and she's
16 defined it for you once and she's going
17 to define it for you again, and she's
18 going to tell you it's that kind of
19 belief that you would use in the most
20 important of your own affairs. And let's
21 take a minute and think about what is the
22 most important of your affairs.

23 If you're a parent, your children.
24 Would you let some of these witnesses
25 babysit your child? If you're buying a

1 new home, would you accept their word on
2 buying a house or buying a car? Those
3 are the things that are most important in
4 your own affairs. And then she's going
5 to tell you you should find Ruben Jordan
6 not guilty if they don't do that. But
7 she's going to tell you that you must,
8 she's going use that word, you "must"
9 find him not guilty if you don't find
10 beyond a reasonable doubt that they have
11 proved this case.

12 Excuse me. I have got a bad cold.
13 They talk about your witnesses. And
14 Victor Davis, Jr., came in, and other
15 witnesses, and there wasn't any doubt
16 that Victor Davis, Sr. knew that he was
17 going to die. He saw a murder committed,
18 he went to the police and acknowledged
19 it, and he was being threatened on a
20 regular basis. He knew he was going to
21 die. You just don't do that kind of
22 thing down in that community, and he did
23 it anyway because his friend was killed.

24 witnesses told you that Victor
25 Davis, Jr., was afraid of Shawn and

1 Kareem. He didn't tell you that he was
2 afraid of Ruben Jordan, never mentioned
3 the word Ruben Jordan. The only time he
4 mentioned -- Victor Davis, Jr. mentioned
5 Ruben Jordan was he said that after he
6 found out who Ruben Jordan -- who Victor
7 Davis was, he went to Victor Davis, Jr.,
8 put his head on his shoulder and told him
9 how sorry he was, but he says men don't
10 do that. Think about it for a moment.
11 If you found out your child took
12 somebody's life and you knew the
13 relative, would you not go to them and
14 express not only your sorrow that they
15 have had that loss, but the particular
16 sorrow that your son is the one that
17 committed that?

18 Victor Davis Jr. also told you that
19 he was involved in some gun play. He was
20 out carrying a gun and he was being
21 threatened by Shawn Gilbert, Kareem's
22 brother. He was walking around, showed
23 him a gun, pointing it at him. He wasn't
24 ever threatened by Ruben Jordan. It was
25 Shawn Gilbert that was involved. Shawn

1 Gilbert is the same one that took Victor
2 Davis aside and was jawing at him when
3 the first killing occurred because he
4 didn't want him talking to the police,
5 not Ruben Jordan. Ruben Jordan wasn't
6 even mentioned.

7 Now, Dean Shade didn't tell you he
8 saw all that. He saw from the window,
9 and you're supposed to believe what this
10 man told you beyond a reasonable doubt?
11 But it's amazing because what he saw has
12 improved as time went by.

13 Now, he's 75 percent sure that it
14 was Ruben Jordan. Before that, he
15 wasn't. And he also tells you that he
16 saw Victor Davis die, saw him take that
17 last breath. But there were no police
18 officers there. And yet a police officer
19 came in and told you that he was talking
20 to Victor Davis and saw him take his last
21 breath and die.

22 Now, how could Dean Shade have seen
23 that? He couldn't. He's making stories
24 up, people that are down there at this
25 scene. There is rumors going around,

1 people talking, people whispering through
2 windows and everybody builds their own
3 case.

4 You know, there is very few people
5 that I believe came in here and testified
6 that don't have their own prejudices.

7 They want you to believe a certain way.

8 Detective Glindmeyer came in and he told
9 us that they avoid contamination of the
10 scene, that they are down there and they
11 rope it off and nobody is allowed to come
12 in except that you've already heard
13 people testify that there were people
14 down there, somebody talking to Victor
15 Davis as he was dying.

16 And there was a woman down there
17 picking up stuff off the sidewalk where
18 the killing had occurred. what did she
19 take? I don't know, and you don't
20 either. But it certainly is a
21 contaminated scene.

22 And then he tells you, because he
23 wants you to find Ruben Jordan guilty,
24 tells you that Victor Davis, there were
25 scrapes on his knuckles and they were

1 bleeding. You just don't collapse when
2 you fall on pavement. Is that he was in
3 a fight, a fistfight. He was fighting
4 for his life. And now isn't that
5 dramatic? Here's a man down there
6 fighting for his life, and he got the
7 proof, his knuckles. And now that's what
8 the officers want you to believe, except
9 the coroner comes in and says that's not
10 true.

11 These are the types of abrasions
12 that you routinely see from a scrape
13 against a paved surface wall, something
14 that is a broad, flat surface. Asked
15 him, could he get in a fistfight?
16 They're not exactly the right location
17 for the average fistfight. You almost
18 have to scrape somebody this way or this
19 way on a flat surface, preferably with
20 more of an abrasive surface like concrete
21 or brick. But this officer wants you to
22 imagine that Victor Davis is down there
23 fighting for his life because it's more
24 dramatic and gets your emotions involved.

25 And the doctor went on to say all

1 very short ones that involved his knee,
2 and also again a prominence with a broad
3 surface area, area relatively speaking to
4 the right side of his forehead, there is
5 much to appear to be from striking the
6 pavement, a bit of a skid on the pavement
7 or falling. She explains it all
8 medically, and she doesn't have a reason
9 to adjust. I think she's the only one
10 that was totally unbiased when she came
11 in and testified. You saw her up there
12 on the stand. She tells you what her
13 name is, what her credentials were and
14 what she found in the autopsy.

15 Officer Glindmeyer was asked by the
16 prosecutor, but it is your education,
17 training and experience, 31 years of
18 experience, that when you collected the
19 phlegm that night of the crime scene it
20 was fresh phlegm? Yes, ma'am. I asked
21 him: Have you had any training in
22 determining fresh phlegm from stale
23 phlegm? He said there is no training,
24 it's just experience.

25 So, when he told you from his

1 training, he lied. He doesn't have any
2 training in that. I'm not trying to hide
3 something from you, there was phlegm down
4 there and it belonged to my client. How
5 it got down there, I don't know and you
6 don't know. His grandchildren live down
7 there and he was down at the scene.

8 whether it was 12 hours -- and
9 let's extend it a little bit, let's say
10 he was down there when Victor Davis was
11 killed. That doesn't tell you that he
12 was involved in it. Did he tell his son
13 to do it? Did he fire the shot? You
14 don't know those things. You have got to
15 speculate. And what you have to do is
16 find it beyond a reasonable doubt, and
17 it's not there. The phlegm was there,
18 Ruben Jordan was down there at some time.
19 when, I don't know. All the officers
20 said it could have been within an hour.
21 I don't know and you don't know.

22 Now, they tell you Kevin Heard came
23 in and said he's got nothing to gain, and
24 he's got all these intimate details. All
25 these intimate details were in the

1 newspaper and heard out on the street.
2 Now, they want you to believe beyond a
3 reasonable doubt that my client came up
4 and told him that he killed somebody and
5 his son is taking the fall for it.

6 Let's go back to beyond a
7 reasonable doubt in the most important of
8 your affairs. Would you let Kevin Heard
9 watch your children? Would you let Kevin
10 Heard sell you a house? This man, who's
11 Mr. All American, is out every day
12 selling crack cocaine. That's his
13 occupation. People that go out and
14 commit prostitution, commit crimes, high
15 on crack, this is one of the gentleman
16 out there feeding it to them, and he's
17 telling you he came in as a regular
18 citizen.

19 Also, he's somebody that got shot
20 because of his dealings and had to leave
21 this area. Now, has he and Ruben had
22 fights in the past? Does he have a
23 grudge against Ruben? I don't know and
24 you don't either.

25 But you have really got to sit and

1 think about beyond a reasonable doubt
2 with Kevin Heard. Does he really know
3 what he's telling you?

4 Kareem Gilbert. One of the pieces
5 of evidence that you're going to have
6 back there is the plea agreement that the
7 prosecutors made with Kareem Gilbert.

8 Now, I want you to remember a
9 couple of things, because this absolutely
10 amazes me. On May the 17th, Kareem
11 Gilbert was set to go to trial for this
12 murder and the other one that he
13 committed. The State of Ohio was ready
14 to go into a courtroom and tell you they
15 were going to prove beyond a reasonable
16 doubt that Kareem committed that crime,
17 and they knew about Mr. Heard and they
18 knew about the phlegm, but they're going
19 to prove to you that Kareem did that
20 killing. Isn't that amazing?

21 The State of Ohio is going to trial
22 against Kareem and prove that he
23 committed that crime while they know all
24 these things now that they tell you
25 proves that Ruben was beyond a reasonable

1 doubt, and they're going to say, well,
2 they could have acted jointly. Nobody
3 said they did except what you heard here
4 from the prosecutor.

5 Now, you have Kareem Gilbert's
6 statement that he made to the police.
7 And the Judge is going to tell you that
8 that is not evidence of what the
9 statement says. The evidence is you can
10 use his statement to judge what he's
11 saying, whether it's true or not, not any
12 of the statement as evidence against
13 Ruben Jordan, and that's difficult.
14 Somebody tells you this and somebody else
15 says well, you can only use that little
16 bit of information for just one purpose,
17 but that's what you have to do. You have
18 sworn an oath that you're going to well
19 and truly try this case. I know it's
20 difficult, but that's what the Judge is
21 going to tell you.

22 Now, the State has decided that
23 they really want Ruben Jordan. Kareem
24 Gilbert goes out and chases a man down
25 because he hit him with a sandwich.

1 Chases him down like a dog and shoots and
2 kills him. And the State agrees that
3 they are only going to get a plea to
4 manslaughter, not aggravated murder, not
5 murder, manslaughter. And he's agreed
6 that he's only getting an 18-year
7 sentence in exchange for that. He's got
8 to tell them that his dad was involved.

9 Do you know what that is like for a
10 19-year-old? All the sudden, you're
11 going away for 18 years and you may be
12 going away for even more than that for an
13 aggravated murder because for two of
14 them, because you're not going to get a
15 manslaughter if you don't tell us what we
16 want.

17 So, now, this 19-year-old and one
18 of the witnesses says that he's a vicious
19 killer. Says, hey, I got an out, I only
20 have to do 18 years for two killings,
21 I'll give them what they want, and he
22 did. And you're going to have the
23 letters that he wrote to his father, and
24 on one of them he says specifically dad,
25 I have got two body bags, can you take

1 one of them for me? He doesn't say in
2 that letter, tell them what you really
3 did, dad.

4 Now, the prosecutor tells you that
5 there is a part that is scratched out and
6 that could have said, I don't know what
7 she said, it could say anything, but it
8 doesn't fit into what she's trying to
9 say. And I will tell you the back of
10 this one, the yellow letter, is scratched
11 out. That letter was a letter from his
12 father, and he used the same paper, the
13 back of the paper and sent his letter to
14 Ruben.

15 Now, he's asking his dad to take
16 this body bag off of him. He doesn't
17 want to be caught with that because he
18 knows he's going to go for a long time if
19 he gets 20 years for each one. He's
20 going to be 60 when he gets out, and he
21 doesn't want to deal with that. He's
22 asking his dad to take it and dad won't
23 take it. He doesn't do it, he wasn't
24 involved and he's not going away for an
25 aggravated murder that his son committed.

1 The 911 calls that the police
2 officer testified they got from people
3 around the scene never once mentioned
4 Ruben Jordan. They sure did mention
5 Kareem and they sure did mention Shawn,
6 didn't mention Ruben Jordan. Isn't that
7 amazing?

24 You know, Kareem is hit by somebody
25 with a sandwich. How many times have you

1 been confronted by somebody that stepped
2 on your foot or pushed you or slammed the
3 door in your face? He is hit with a
4 sandwich. And what does he do? He
5 leaves the area. He lives right there
6 within several, 50 feet, comes back out
7 to the scene and what's he do? Pulls a
8 gun and chases a man down and kills him.
9 That is a vicious killer. And wasn't no
10 doubt he intended to do it. He came back
11 with the gun. He didn't have the gun
12 there. And he came back because the man
13 had hit him with a sandwich. He shot and
14 killed him, and he gave Victor Davis a
15 green card.

16 That's the kind of person he is,
17 that the State is telling you he's
18 indicated his father did it. we've also
19 allowed to come into evidence, without
20 argument, Ruben Jordan's record, and I
21 don't know whether it's five or six
22 convictions that he's gotten, and he's
23 been to prison before. A man who's 38
24 years old has got five or six felony
25 convictions, ought to tell you something

1 about the kind of person that you're
2 dealing with. He likes drugs. He does
3 drugs. People have told us that he's a
4 crackhead. But not one of those is for
5 domestic violence, not one of those is
6 for assault, not one of those is for a
7 murder or a felonious assault. There
8 isn't one crime of violence in that man's
9 record. And then they are telling you
10 that to save his son he went out and
11 chased somebody down, followed them, went
12 down to the scene and shot and killed
13 them.

14 I'm going to ask you when you go
15 back there, remember the Judge's
16 instructions beyond a reasonable doubt.
17 Was Ruben Jordan down there shortly
18 before or shortly after the killing? He
19 might have been. Was he there when the
20 killing occurred? I don't know and
21 neither do you. But I'm telling you, the
22 State cannot prove this matter beyond a
23 reasonable doubt that Ruben Jordan took
24 Victor Davis's life, and I'm asking you
25 to return a verdict that the Judge is

1 going to tell you you must do if it isn't
2 proven beyond a reasonable doubt, and
3 that's a not guilty. Thank you.

4 THE COURT: State have any more --
5 anything else to add here, closing
6 argument?

7 MR. TIEGER: Yes, Judge. Thank
8 you.

9 THE COURT: I should tell you that
10 the reason that the State has the
11 opportunity to address you twice is
12 because they have the burden of proof,
13 and that is the reason. The law allows
14 them to have the last word in this.

15 MR. TIEGER: Hello, everybody. It
16 is hard to go last. This has been a long
17 trial, like Ms. Shanahan said. I'm sure
18 you're ready to deliberate and finally do
19 what you are expected to do. I do have a
20 few things to say.

21 First of all, and this is very
22 common in these kind of cases, you have
23 seen Ms. Shanahan and especially Mr.
24 Whalen, and I'm gonna do it as well in my
25 closing argument, is like pull out a

1 transcript. And Ms. Renken, the court
2 reporter, she's been nice enough to type
3 up some of the transcripts for us. We
4 have got the transcript of Kareem
5 Gilbert, what he said to the police, the
6 discs that you listened to.

7 Unfortunately, you do not get any of
8 those transcripts.

9 The only evidence that you're
10 allowed to receive are the exhibits that
11 are retained by the court reporter. So I
12 know we have been referring to those and
13 a very common jury question is what's the
14 deal? You know they have been referring
15 to these transcripts, these pages, these
16 lines, we want those -- we need those.

17 Well, that is not part of the evidence
18 that you have, and you're not going to
19 get those in the jury room. You will get
20 actually the discs of Kareem Gilbert's
21 statement to myself, Ms. Shanahan and the
22 police officers in the jury room.

23 So, if you would like to listen to
24 them, you can definitely listen, and
25 Mr. Brenner or Ms. Smith can get you a

1 disc player, whatever that you would need
2 to play that.

3 I hate to say the same things as
4 Ms. Shanahan. Hopefully, we won't
5 overlap too much. Was Victor Davis
6 murdered? Absolutely. He was shot in
7 the head. He had no weapon. He was shot
8 three times. He was left to die in the
9 street. Was it an unknown killer? I
10 think Ms. Shanahan covered that very,
11 very well. It was not an unknown killer.

12 So, the evidence is that as Victor
13 Davis told Detective Avant, the family,
14 I'm afraid of the Gilbert family. So,
15 now all we are left with is who in the
16 Gilbert family did this? Which one of
17 the -- I'm talking Mr. Jordan is part of
18 the Gilbert family. Which part of that
19 extended family did it?

20 We really only have three names,
21 Kareem, Shawn and Ruben Jordan. Which
22 one of those three? And as far as Shawn
23 goes, I mean, he's kind of an unknown --
24 he hasn't been a witness, he hasn't been
25 called. We really don't know too much

1 about him other than to say there is no
2 evidence whatsoever to suggest in any way
3 that he was part of this, was there, had
4 any involvement in this whatsoever.

5 There is no witnesses, and there is
6 no physical evidence to suggest that he
7 was at the crime scene of the Victor
8 Davis homicide when Victor Davis was
9 murdered. There is nothing other than
10 the fact that he was confronting Mr.
11 Davis that night and Mr. Davis was scared
12 of that family.

13 So, let's rule him out. Now, let's
14 go to -- the Court will tell you, I
15 believe, and I don't know whether it's in
16 the instructions or not, but that we
17 don't have to prove motive in a murder
18 case. But there is always a motive in a
19 murder case. And in this case, the
20 strongest possible motive is to protect
21 Kareem Gilbert from answering to the
22 murder of Brian Austin.

23 And as far as Victor Davis not
24 specifically being afraid of Ruben
25 Jordan, like Mr. Whalen said, sometimes

1 the most dangerous enemies are the ones
2 you don't know about because the ones
3 that you know about, you don't have to
4 pick them up in a bootleg cab, like
5 Kareem Gilbert said he called him for.
6 You don't have to really -- you can plan
7 for those people that you know are going
8 to get you, but the people that you
9 really don't know about oftentimes are
10 the most dangerous. And in this case the
11 family patriarch, Ruben Jordan, took
12 over.

13 Now, as far as the defense
14 attorney, Mr. Whalen is one of the best
15 local attorneys there is. He's a very,
16 very experienced and talented lawyer.
17 And you can tell when we saw these
18 letters that were written, those were not
19 disclosed. And when Mr. Whalen saw Mr.
20 Jordan in the penitentiary, we did not
21 know about that.

22 Now, the rules say that the defense
23 lawyers don't have to do that. So, I
24 mean, he did not violate any rules and he
25 played within the rules, but basically,

1 as a defense attorney, what his job is,
2 and he's done it very well, are to win
3 the case at all costs within the Rules of
4 Evidence.

5 Now, our job, Ms. Shanahan and I,
6 is to see that justice is done in a
7 particular case. We have got a different
8 burden than the defense has. And what we
9 are trying to say is that as far as this
10 plan goes, the plan that we are
11 suggesting was used by Mr. Gilbert and
12 Mr. Jordan backfired because Mr. Jordan
13 and Mr. Gilbert were really unaware of
14 the Rule of Evidence because there is a
15 rule, and it's basically called
16 forfeiture by wrongdoing that says that
17 when a witness is killed, that witness's
18 statement can be used if the wrongdoing
19 is by the perpetrators of the act and
20 that witness's unavailability is caused
21 by the people that did the original act.

22 So, when people like Mr. Jordan and
23 Mr. Gilbert are thinking about how do we
24 handle this, let's just kill the witness,
25 that witness's statement will not come

1 in, you'll walk away from the Austin
2 murder and everything is going to be
3 better. Well, the Rules of Evidence
4 foresee that type of situation, so what
5 happens is Davis's statements to the
6 police are admissible against Mr. Gilbert
7 in his own trial.

8 So that, plus, the DNA on his
9 t-shirt corroborating the crime had been
10 strong enough to pursue the case against
11 Mr. Gilbert. And the plan is so obvious,
12 this plan that Ruben Jordan's charge,
13 Kareem Gilbert can come in here and say
14 he lied, Ruben Jordan will be found not
15 guilty, as Mr. Whalen asked you to do.
16 Just remember, this plan has been hatched
17 a long, long time ago. We are finally at
18 the culmination this morning, with you
19 folks, of his plan to get out of this
20 from the very beginning.

21 Don't think this was something that
22 had not been thought through. The whole
23 thing is that they knew there was going
24 to be a jury somewhere down the road, and
25 this is his clear final test, his final

1 obstacle is you folks, and we are asking
2 that you not let him get past justice by
3 a jury trial in this particular case,
4 because when he is found not guilty, I
5 don't know whether you have heard, it's a
6 term called double jeopardy.

7 And at a later point, if Kareem
8 Gilbert is charged with Davis's homicide,
9 there is nothing to prevent Ruben Jordan
10 from coming in here, another jury months
11 and months from now and saying, yes, I
12 did do it.

13 Now, that would be pretty
14 monumental, and I don't know if anybody
15 would believe him, but double jeopardy
16 prevents him from being tried twice for
17 the same crime.

18 So, again, this is the kind of plan
19 that you don't know where it's going to
20 go, but it's certainly foreseen that type
21 of thing could happen depending on how
22 this thing goes with you folks.

23 And I told you in jury selection
24 Kareem Gilbert was a dangerous
25 individual. we didn't try to hide that

1 at all, and that you got a 16-year-old
2 thug like Kareem Gilbert, and I'm a
3 little bit confused that he got 18 years
4 flat. Mr. Whalen is saying that if he
5 gets a much more significant sentence,
6 and certainly reinstating the Austin
7 murder and perjury charges, all these
8 things could add up to a lot more time.

9 And I will tell you that you will
10 have this in the jury room, which is
11 Kareem Gilbert's plea agreement, and you
12 can see on the back there is a lot of
13 legal language, my name is on here, I
14 signed it as well as Mr. Gilbert and
15 Mr. Issenmann signed this as well Mr.
16 Gilbert's attorney. And I'm not naive,
17 and I have been doing this a while, and I
18 don't trust anybody to do what they say,
19 even though we expected Kareem Gilbert to
20 come in here and tell the truth about
21 what he had originally told us.

22 So, obviously, you know, Ms.
23 Shanahan and I are not stupid enough to
24 say here, go ahead and do your 18 years,
25 just promise to tell the truth, and

1 that's it. Because if we did that, we
2 would be extremely naive, and that would
3 be wrong of us to do. So, we do have a
4 plea agreement, so that there are
5 consequences and there are going to be
6 consequences to Mr. Gilbert.

7 But my contention is that because
8 he's facing more time, the fact that he
9 may do more time, 18 years to a
10 16-year-old thug is the same as 30 years,
11 40 years. It's a long period of time.

12 As Ms. Shanahan said, he doesn't think
13 past today. So what if it's 18 years, it
14 could be life to him. We wanted to make
15 sure there are consequences, there are
16 going to be consequences. We protected
17 ourselves, but that doesn't mean that he
18 didn't come in here and lie for his
19 father.

20 And I agree with Mr. Whalen, Mr.
21 Gilbert does not care about rules and
22 ramifications because of his own murder.
23 He doesn't care. He doesn't think past
24 the moment. He did what he did with you
25 folks because of the brains of the

1 family, Mr. Jordan.

2 And it's funny that -- I'm a little
3 bit confused about Mr. Whalen's closing
4 argument, that he's almost conceding that
5 Mr. Jordan was actually there at the time
6 of the murder. And my contention is that
7 if he was there at the time of the
8 murder, he's guilty. There is no other
9 reason to be at the scene of the Victor
10 Davis murder unless you were involved.

11 If he were that close to the body
12 and spit at the time Mr. Davis was
13 murdered, he's either guilty as the
14 gunman or guilty as a complicitor, and
15 you will get the complicity instruction
16 which means that you aided, abetted,
17 assisted, encouraged or were part of a
18 plan. It doesn't matter who the actual
19 gunman was, and that actual -- and the
20 complicitor is just as guilty, as Ms.
21 Shanahan mentioned, of the gun spec as is
22 the actual shooter.

23 And what I think is interesting
24 that Mr. Whalen, really if you think it
25 through and you all are an intelligent

7 But the funny thing is Kareem
8 Gilbert, what Mr. Whalen wants you to
9 believe, is Kareem Gilbert came in here
10 and told you the truth about his father
11 not being involved. In fact, the whole
12 thing about the alibi, if you recall,
13 Kareem Gilbert said we were at home
14 together that night. Believe me, I
15 didn't go down there, he didn't go down
16 there. But what's also more interesting
17 is that Leshuande Ramsey, if you recall
18 her from Friday, came in here, and not
19 only did she alibi him, but she alibied
20 Kareem Gilbert, didn't she, because she
21 said that he was in his pajamas the whole
22 night so neither one of them could have
23 done it.

24 was she truthful with you when she
25 said that he and Kareem Gilbert were home

1 that night with the big thing watching
2 movies and all that? So, if you believe
3 her, it couldn't have been Kareem Gilbert
4 either. But Mr. Whalen is saying, hey,
5 even if he were down there and did spit,
6 it doesn't mean that he did it. I would
7 strongly disagree with that.

8 And I'm just going to briefly go
9 through some of these statements with
10 you. And, again, you're not going to
11 have these, and I apologize for almost
12 reading from them when you're not going
13 to get them, but what you need to look at
14 is how these witnesses, and I think the
15 sign of the truth, how you can test
16 people is to see what did they say, and
17 then compare what they said to what
18 somebody else says and see if there is
19 anything that is matching.

20 For instance, if Kareem Gilbert
21 said something in his May 17th statement
22 that matches what Kevin Heard said,
23 Kareem Gilbert and Kevin Heard do not
24 know each other. That would be the truth
25 because they match and they have no idea

1 what the other one said.

2 And I would strongly disagree with
3 what Mr. Whalen said about Mr. Heard.

4 There is no evidence that these details
5 were in the paper, because the reporter,
6 Kimbell Perry, is sitting in the
7 courtroom. These papers are all
8 archived, and it's easy to get copies of
9 what's in the paper. There is no
10 evidence that anybody got any information
11 in the newspaper on this case.

12 Kevin Heard told you, and I'm
13 summarizing, that he previously worked
14 with Officer Sneed a long time ago, and
15 there has been no contact since then, and
16 he called because he trusted Sneed. But
17 Sneed told you, as well, that Kevin
18 Heard's information is corroborated by
19 Sneed, because Sneed said I knew him, I
20 had worked with him in the past. We
21 hadn't had contact for a while. He
22 called me, I called him back. He had
23 some vague information about a murder,
24 that he knew who had done it, but all he
25 had was a nickname. He didn't have the

1 full name. And I told him to try to find
2 out what that was.

3 That's what Kevin Heard told you,
4 that's also what officer Sneed told you.

5 They corroborate each other. That is the
6 test that you look at to see whether
7 somebody is telling you the truth.

8 Also, both of them said that they
9 met at Kroger's a couple weeks later.

10 Again, they corroborate each other.

11 Sneed told you what Heard did. Heard
12 told you the same thing. When Heard said
13 I got the name, Sneed corroborates that
14 and he gave him the name of Luke,
15 Detective Luke. And what does Luke tell
16 you? That she got a phone call from
17 Sneed. And, again, these are the things
18 that you use to test credibility. And
19 going from there that you look at all the
20 specific case facts.

21 Does Kevin Heard sell drugs on
22 Burnet? Sure. Does the defendant use
23 crack cocaine? Well, Kevin Heard said he
24 did, Kareem Gilbert said he did, and even
25 Leshuande Ramsey said that Ruben Jordan

1 uses crack cocaine. So, if we can take
2 that for a given that Ruben Jordan --
3 even Mr. Whalen says he is a crack user.
4 Does Kevin Heard sell crack on Burnet?
5 Yes. Does the defendant have to buy
6 crack from somebody? Obviously. Did the
7 defendant buy from Mr. Heard? Did he?
8 There is no reason to say that he didn't.
9 He's on Burnet. It's walking distance.
10 He's a known drug dealer.

11 So, if you ask yourself, do they
12 know each other? Do Heard and Jordan
13 know each other? I think you could go
14 back in the jury room and say, yeah, they
15 did know each other. So, now, the issue
16 is, did he say what Mr. Heard said he
17 said? He's known by Red. Everybody said
18 that that's his nickname. He said that
19 he's always had a shaved -- a bald head
20 or shaved head. Mr. Heard said ain't
21 never seen him with hair. All the
22 witnesses say that as well. He does not
23 want to be labeled a snitch.

24 Obviously, there is a lot for him
25 to lose and nothing to gain. He's saying

1 it because he's coming in here, because
2 he told you it's the right thing to do.
3 He even told Mr. Jordan that he's going
4 to go to hell for what he did. He
5 told -- Kevin Heard told you that Ruben
6 Jordan told him that his wife and I think
7 daughter or sister were trying to tape
8 him.

9 If you recall, Mr. Heard thinking
10 of one of the conversations Mr. Heard had
11 with Mr. Jordan, I think the second one,
12 Jordan came in and said, hey, my wife and
13 daughter or sister are trying to tape me.

14 At the time that's pretty
15 inconsequential, isn't it? But these
16 kind of details turn out to be the most
17 important things of the case because
18 Kareem Gilbert in his May 17th statement
19 told the police the same exact thing,
20 that his mom, and I believe sister, were
21 trying to videotape Ruben Jordan and
22 trying to get him to confess on video,
23 but it didn't work like a telephone. How
24 would Heard know exactly -- would know
25 that other than to hear it from him?

1 MR. WHALEN: Your Honor, I'm gonna
2 object. He's violating the instructions
3 that you're gonna give them about Kareem
4 Gilbert's statement.

5 THE COURT: Do you want to step
6 over here, Counsel?

7 (The following transpired at
8 sidebar as follows:)

9 MR. TIEGER: Judge, basically what
10 I'm saying, the defense is wanting the
11 jury to believe that what Kareem Gilbert
12 said under oath was true, and I'm saying
13 why? what he said originally was true,
14 and they can only use it, I agree, for
15 impeachment, but it's a matter of, you
16 know, he's saying believe Kareem Gilbert,
17 we are alibied, he didn't do it, we are
18 together.

19 THE COURT: And you're saying?

20 MR. TIEGER: I'm definitely not
21 arguing they use it for truth.

22 MR. WHALEN: He's telling him to
23 use Kareem Gilbert's statement to
24 coincide with what another witness said
25 to him, that's using it as evidence

1 against the father.

2 THE COURT: Keep your voice down.

3 MR. WHALEN: I'm sorry.

4 THE COURT: Evidence against the
5 father.

6 MR. WHALEN: And you are telling
7 them you can only use it to judge the
8 truthfulness of what he testified here.

9 THE COURT: Did you want to say
10 something? Do you want to say something
11 about that?

12 MS. SHANAHAN: No.

13 THE COURT: Are you going to do a
14 lot more comparisons?

15 MR. TIEGER: No, no. I'm going to
16 go through some of the specifics that he
17 said, just to say what he said in court
18 was not true.

19 THE COURT: What he said in court
20 wasn't true?

21 MR. TIEGER: Yeah.

22 THE COURT: By contrasting with his
23 statement?

24 MR. TIEGER: I understand. I'll
25 try to stay away from that.

1 THE COURT: I'll make a curative
2 instruction, that's what I'm going to do
3 with it.

4 MR. WHALEN: Okay.

5 (Sidebar concluded.)

6 THE COURT: I want to advise the
7 jury again that the statements of Kareem
8 Gilbert that were made in the tape are
9 not evidence, and does -- is not
10 testimony, but it is used for a very
11 specific purpose. And the purpose of
12 closing argument is it persuade you that
13 the state and the defense have proved
14 their case, and they are referring to
15 matters that come before this Court. But
16 I'm advising you that you have a limited
17 purpose in using anything connected to
18 Gilbert -- to Kareem Gilbert's statement
19 that he made. And I will explain what
20 testimony is and the difference between
21 the testimony and using it to weigh
22 credibility. You're using taped
23 statements to weigh his credibility;
24 therefore, I have advised the State to be
25 careful not to confuse the jury, and they

1 have agreed to do that. So, we'll
2 continue.

3 MR. TIEGER: Thank you, Your Honor.

4 Again, Heard was very accurate in how to
5 portray exactly what was said. Moving on
6 to Dean Shade, the supposed
7 inconsistencies as to his last breath are
8 so inconsequential that they are
9 ridiculous. Whether somebody dies -- and
10 you heard officer Fusselman say that he
11 was there within, I think he said, 15 to
12 20 seconds. I forget what he said. That
13 he was around the corner. He got there
14 very, very quickly.

15 As to whether somebody gasped their
16 last breath at 11:30 or 11:30 and 30
17 seconds, again, not important as to what
18 Dean Shade is trying to, as Mr. Whalen
19 said, elaborate on what he had said
20 before. Does Dean shade live in the
21 building, just to start from the
22 beginning? Obviously, he lives in the
23 building. Does he have a window over the
24 street? Yes, he does. Is that window
25 directly over where the homicide

1 happened? It is. Did he have a chance
2 to observe and see what he said he saw?
3 Yes, he did.

4 Some of us live in the suburbs, the
5 suburbs have been mentioned. They live
6 in houses. Some of those houses are set
7 back from the street a number of feet or
8 yards. It's hard to see sometimes out
9 50 feet, however far your house is away
10 from the street. But where your building
11 is straight down on the street, very
12 close, it's the sidewalk and then your
13 building, it's a lot easier to see as
14 you're looking down what you saw. There
15 are no grudges. He's got no bad feelings
16 about anybody. He's known the Gilbert
17 boys, Shawn and Kareem, for a long time
18 because he's lived there for a number of
19 years.

20 He told you positively that the man
21 standing over Victor Davis was not Shawn
22 Gilbert and it was not Kareem Gilbert.
23 Positive about that. He knew both those.
24 He's a hundred percent sure. There is no
25 danger of misidentification with him

1 because he knows them.
2 we talked about that in jury
3 selection. Ruben Jordan is not a
4 stranger to Dean Shade. There is no
5 possible way for there to be any
6 confusion or misidentification about what
7 he said. He actually called 911. He
8 said Victor Davis was a great guy. He
9 said Victor Davis was concerned about
10 being a witness, and he said he was
11 75 percent sure it was him. Why is that
12 important? The percentage isn't
13 important, but what is important is that
14 it's a bald-headed man standing over the
15 body that's not Kareem or Shawn.

16 If you reach the point in your
17 deliberations that you are certain that
18 it was somebody in the Gilbert family who
19 did this, those two teen-agers are
20 excluded, then you're left with him.

21 There is nobody else in the world
22 that wanted Victor Davis dead but the
23 Gilbert family. He's the only one left.

24 He told you that he heard a number
25 of shots. He heard the scuffling and

1 then he heard the taunting. And what's
2 interesting about the taunting is that
3 again, there has been some testimony
4 about why he'd spit.

5 Now, do you spit to taunt somebody,
6 like get up -- get up, help me up, hey,
7 you're sitting on the ground. Hey, get
8 up now, let's see how good of a witness
9 you are now. You get up off the ground.
10 Now you testify against my son, spit. Or
11 do you spit because the activity was so
12 strenuous, sometimes when you're running
13 or in athletics, you're worked up, there
14 is a physical exertion and there is a
15 spit that happens after that. Which one
16 was it? I don't know, but certainly
17 there was something spit at that point.

18 And Kareem Gilbert. Again, the
19 defense is asking you to believe what he
20 said in court was true, that he and his
21 father were together and neither one of
22 them could have done it.

23 But as you play the statement, if
24 you need to, if you look through that, if
25 you read that statement, it's -- I mean

1 five trained people. I'm not trying to
2 toot my own horn, but you got Detective
3 McGuffey and Luke and Vaughn and they're
4 all homicide investigators. And Ms.
5 Shanahan and myself all part of a plea
6 agreement, as you can see that it says
7 that. The statement has to be truthful.

8 And as Detective Ballman told you,
9 a lot of people want to cooperate with us
10 in investigations, and we have to make an
11 independent determination of whether what
12 they are saying is true, because we have
13 got a duty, we are officers of the court,
14 we are here to see that justice is done.
15 So, that's why we -- and I don't want to
16 say grill him for an hour, but it wasn't
17 just like, okay, tell us -- you tell us
18 he did it, and we'll take a couple
19 minutes and then that's good enough for
20 us. Because some of these questions were
21 hard questions. Because if you recall,
22 in part of the questioning, he said he
23 threw his gun in the river.

24 But then later on, he said he put
25 it in a garbage can. And I think

1 Detective Luke said wait a minute, I
2 thought you said you threw it in the
3 river. what's the deal? This wasn't a
4 love fest between anybody and Kareem
5 Gilbert, because then he could say I put
6 it there and then went back and got it.
7 Was he in the middle of the bridge and
8 threw it off?

9 MR. WHALEN: Your Honor, can we
10 approach?

11 (The following transpired at
12 sidebar as follows:)

13 MR. WHALEN: I'm going to ask for a
14 mistrial. He has just stepped over the
15 line. He's now being a witness to what
16 occurred when he was in there, and he's
17 testified now about what was going on in
18 that room and how many were there and why
19 they asked this or that. He can't do
20 that. He's a witness now and he can't be
21 both the witness and the prosecutor.

22 THE COURT: Okay. So, you're going
23 to make a motion?

24 MR. WHALEN: Yes.

25 THE COURT: You're going to

1 respond?

2 MR. TIEGER: Judge, I mean, I'm not
3 saying anything other than what everybody
4 said. It's been testified as to who was
5 there, that the five of us were there,
6 and I'm using, as you were instructing me
7 and will tell the jury, what he said in
8 court was not true, and how it was
9 impeached and why you should not believe
10 what he said in court.

11 THE COURT: I will caution you
12 probably not to talk about what happened
13 in the room at this point, but you made a
14 motion, and for the record I don't find
15 that it rises to the level of persuading
16 the jury just off what he's saying, and
17 probably is not durable enough for me to
18 grant that, but I'm going to remind you,
19 you have to stop.

20 MR. TIEGER: I'm going to go
21 through his statement, Judge, and say
22 what he said and how.

23 THE COURT: You can't be a witness,
24 what you heard said.

25 MR. TIEGER: Okay. I'll just read

1 from the transcript.

2 THE COURT: Stop supporting your
3 comment. You can make those without
4 referring to what you said, what you hear
5 and did in the room.

6 MR. TIEGER: Thank you, Judge.

7 THE COURT: You can do that. So,
8 that's my ruling. I'm going to deny the
9 mistrial, but it's in the record.

10 (Sidebar concluded.)

11 THE COURT: We are going to take a
12 comfort break at this time. Would you
13 leave your notes here, jurors, and again
14 I know you want a comfort break before we
15 start deliberating on this matter and
16 talking about the testimony and any
17 argument. So, you know you cannot do
18 that at this time.

19 Remember your admonitions, but
20 there will be a comfort break for ten --
21 we'll say 15 minutes so you all get
22 prepared. Thank you.

23 (The jury leaving the courtroom at
24 10:30 p.m.)

25 THE COURT: While they're gone,

1 there is new spectators that have come
2 into the room, so at this time remove
3 your cell phones, turn them off. I don't
4 want them vibrating or doing anything. I
5 don't know whether you have any cell
6 phones or not, but get them out of your
7 pockets and purses, and also do not have
8 them in your hands. You're not allowed
9 to have cell phones in your hands or
10 using them.

11 | (Recess.)

14 THE COURT: And, Mr. Tieger, you
15 may continue with your closing argument.

16 MR. TIEGER: Okay. I only have a
17 few more minutes. With Kevin Heard, just
18 one more thing about Mr. Heard. He told
19 you that he called Detective Luke on
20 February 11, that's the disc that was
21 played where the controversy was over
22 when he said how old Mr. Jordan was. And
23 I think the transcript said 20s, but
24 Detective Luke said she thought it said
25 four -- and then she interrupted him.

1 Those aren't introduced. I think there
2 was a little dispute between the defense
3 and us in terms of let's put it all in
4 and there was an objection, so they were
5 not put in.

6 Regardless of that, that phone call
7 was made on February 11th of 2009. And
8 what's critical about that is that Mr.
9 Heard told Detective Luke that he had
10 spoken to Mr. Jordan, and Mr. Jordan was
11 concerned at the time because he had just
12 given a swab for DNA and that he was
13 afraid that he dropped something at the
14 crime scene.

15 Again, very interesting because
16 that's corroborated because Detective
17 Luke told you that they did take a DNA
18 swab from the defendant on February 8th
19 of 2000, which is just three days before
20 the Heard phone call which explains why
21 Ruben Jordan was nervous right after that
22 because he was afraid that he had dropped
23 something at the crime scene.

24 And just going through the
25 statement of Kareem Gilbert, and, again,

1 you can listen to it, if you want. You
2 don't have to listen to it if you don't
3 want to, but just to use it for the
4 purpose of saying that he -- what he said
5 in court the other day about he wasn't
6 there, his dad wasn't there, neither one
7 did it because they were watching the
8 Steelers game, to impeach him as far as
9 why that isn't true, going into the
10 details that he gave to everybody on
11 May 17th, he said that they found Mr.
12 Davis at a motorcycle club where he
13 bootleggs, that he parked there on the
14 side. And he said what his father did,
15 where he pulled out a .38, a revolver,
16 like a cowboy pistol and just started
17 shooting. Remember, no shell casings at
18 the scene, which is consistent with a
19 revolver. That when his father, after he
20 got in the car, he was asked what did
21 your father say about what he had done?
22 And Mr. Gilbert repeatedly, and this is
23 throughout the interview, he really
24 didn't -- he really ain't really say
25 nothing to me.

1 And, basically, like, he gave those
2 details, they just basically drove back
3 and that was over. And, again, somebody
4 that was trying to mislead the police
5 like he told you under oath that he was
6 doing, would come up with a lot of
7 details in a statement. What did he say?
8 I killed that guy. I'm glad I did. You
9 should have seen this, you should have
10 seen that. He didn't give any of those
11 details to the police.

12 Again, why -- what he said under
13 oath was not true, that he really had an
14 alibi. He talked about the blue and
15 white car that Mr. Davis had. He talked
16 about how the car was parked. He talked
17 about the tussle or the scuffling by the
18 car. He talked about how they went back
19 to Ruben Jordan's house, and it goes on
20 and on. And rather than read through
21 this, I will, again, let you review it if
22 you want on your own, but he was correct
23 about the number of shots that were
24 fired. These were not leading questions.
25 And if you recall what leading questions

1 are, they are questions that suggest an
2 answer.

3 So, the police were not saying,
4 isn't it true that he parked here? Isn't
5 it true that he did this? Isn't it true
6 that he went there? Isn't it true that
7 he fired three or four shots? All the
8 words came from Mr. Gilbert's mouth in
9 terms of specificity. Again, why what he
10 said under oath was not true, that he
11 just shot him in the head. Again, why
12 what he said in court was not true? And
13 then it goes on about the taping and so
14 forth that I told you about.

15 In jury selection, Mr. Whalen asked
16 a lot of questions about would you
17 believe police, do they lie? And a lot
18 was asked about police lying, and you all
19 talked about that with him. And I really
20 didn't understand where he was going with
21 that at the time, because this isn't
22 really a police case, so to speak. It's
23 not a case where police involvement is
24 that critical.

25 Now, if he wants to tell you that

1 Criminalist Glindmeyer is lying about the
2 injuries to Mr. Davis's hands, that
3 Officer Glindmeyer thought he had got
4 them by way of a fistfight. Well, I
5 mean, certainly at the time, that's one
6 of the things you're thinking about.
7 There is injuries to your hands, maybe
8 there was a fight, maybe this is part of
9 the crime scene. I want to make sure
10 that the hands are protected and somebody
11 notices the hands. It turns out he was
12 wrong. There wasn't -- there was a
13 tussle, but the injuries were from a
14 fall. But I wouldn't characterize that,
15 the evidence shows is a lie that officer
16 Glindmeyer is trying to mislead you at
17 all.

18 And as far as the spit, all I can
19 think about, that there would be a
20 controversy about these police officers
21 telling you the age of the spit, that it
22 was fresh. But Mr. Whalen, in his
23 closing argument, again seemed to
24 indicate that his client was there at the
25 time of the murder. So, that really

1 obviates the need to determine the
2 freshness of the spit, but certainly this
3 has been -- the opinion about the spit
4 isn't something new.

5 If you remember, Officer Fusselman
6 came into court, he's the first
7 responding officer to the Victor Davis
8 homicide. He got there within a few
9 seconds. He gets there, and right away
10 he notices the spit. He thought it was
11 fresh. He thought that that's something
12 that needs to be preserved, and he was
13 hoping that another police or fire
14 officer who's trying to save Victor
15 Davis's life didn't put it there. This
16 was done prior to Luke, anybody getting
17 involved in the case. This is his
18 opinion and what he said.

19 Glindmeyer and Luke, the same way,
20 they had no reason at the time to think
21 it was fresh because they didn't know
22 what his alibi would be that he wasn't
23 even there, that he hadn't been there for
24 12 hours. So, this isn't like something
25 that has come at the last minute that

1 everybody thought this was important,
2 it's fresh, like Detective Luke saying
3 God, these firefighters or another
4 uniformed cop must have spit right there
5 by the body.

6 So, not knowing what the defense
7 would be, these are opinions that were
8 reached at the time.

9 Obviously there is a lot at stake
10 in this case for both sides. This is an
11 important case for Cincinnati law
12 enforcement. You know a witness is
13 killed, and I'm not saying that Brian
14 Austin's life isn't important, certainly
15 it is, but when you have actually got
16 somebody that is going to step up, and
17 you wonder where is it going to stop?
18 Everybody is always saying they want
19 Cincinnati crime curbed. They want it
20 eradicated. They want people to come
21 forward. There is Crimestoppers. There
22 is Cash for Clues. There is all kind of
23 programs. There is community
24 involvement. Let's let the murders stop.
25 well, finally when somebody comes

1 forward, like victor Davis, that's why
2 it's an important case for everybody, Mr.
3 Jordan, the State, for you all to decide,
4 because when a witness is gunned down in
5 the street with impunity, then the
6 shooter of Mr. Austin and the shooter of
7 Victor Davis, who is this man, a father
8 and son play the kind of games that they
9 are playing and have been demonstrated in
10 this courtroom, don't let this
11 grade-school simplistic trick work on
12 you.

13 we would ask you, as Ms. Shanahan
14 says, to find Mr. Jordan guilty and see
15 through his desperate and deliberate
16 tactics to subvert justice, thank you.

17 THE COURT: Thank you. At this
18 time, ladies and gentlemen of the jury,
19 I'm going to give you your instructions.
20 I want you to just listen right now
21 because you will each have a copy, and,
22 therefore, I do not want you to become
23 distracted trying to memorize everything
24 that I'm getting ready to tell you.

25 This case is the State of Ohio vs.

1 Ruben Jordan. Members of the jury: You
2 have now heard the evidence and the
3 arguments of counsel. The Court and the
4 jury have separate functions. You decide
5 the disputed facts and the Court provides
6 the instructions of law. It is your
7 sworn duty to accept these instructions
8 and to apply the law as it is given to
9 you.

10 You are not permitted to change the
11 law nor to apply your own conception of
12 what you think the law should be.
13 Indictment. That is a criminal case
14 begins with a filing of an indictment.
15 The indictment informs the defendant that
16 he has been charged with an offense or
17 offenses. The fact that it was filed may
18 not be considered for any other purpose.
19 The plea of not guilty is a denial of the
20 charges and puts in issue all of the
21 essential elements of each offense.

22 The burden of proof. The defendant
23 is presumed innocent until his guilt is
24 established by proof beyond a reasonable
25 doubt. The defendant must be acquitted

1 unless the state produces evidence which
2 convinces you beyond a reasonable doubt
3 of every essential element of the
4 offenses charged offenses charged in the
5 indictment or of any lesser offense
6 included within that indictment. And
7 that you will be given instructions about
8 all of that.

9 Reasonable doubt is present when
10 the jurors, after they have carefully
11 considered and compared all the evidence,
12 cannot say they are firmly convinced of
13 the truth of the charge or charges. It
14 is a doubt based on reason and common
15 sense. Reasonable doubt is not mere
16 possible doubt, because everything
17 relating to human affairs or depending on
18 moral evidence is open to some possible
19 or imaginary doubt. Proof beyond a
20 reasonable doubt is proof of such
21 character that an ordinary person would
22 be willing to rely upon it in the most
23 important matters of the person's own
24 affairs.

25 what is evidence? Evidence is all

1 the testimony received from the
2 witnesses, including depositions and the
3 exhibits admitted during the trial and
4 facts agreed to by counsel, and any facts
5 which the Court requires to you accept as
6 true. Evidence may -- and you will get
7 some of that also in a moment.

8 Evidence may be direct or
9 circumstantial, or both. Direct evidence
10 is the testimony given by a witness who
11 has seen or heard the facts to which he
12 or she testifies. If I say he or she, I
13 mean both. It includes exhibits admitted
14 into evidence during the trial. So
15 exhibits admitted into evidence during
16 the trial are considered to be direct
17 evidence.

18 Circumstantial evidence is the
19 proof of facts or circumstances by direct
20 evidence from which you may infer -- you
21 may reasonably infer other related or
22 connected facts which naturally and
23 logically flow according to the common
24 experience of mankind. To infer or to
25 make an inference is to reach a

1 reasonable conclusion of fact which you
2 may, but are not required to make, from
3 other facts which you find have been
4 established by direct evidence. Whether
5 an inference is made rests entirely upon
6 you, each individual as jurors. Direct
7 and circumstantial evidence are of equal
8 weight.

9 The evidence does not include the
10 indictment, the opening statements or
11 closing arguments of counsel. The
12 opening statements and closing arguments
13 of counsel are designed to assist you,
14 but they are not evidence.

15 Statements that were stricken by
16 the Court or which you were instructed to
17 disregard are not evidence and must be
18 treated as though you never heard them.
19 You must not speculate as to why the
20 Court sustained the objection to any
21 question or what the answer to such
22 question might have been. You must not
23 draw any inference or speculate on the
24 truth of any suggestion included in a
25 question that was not answered. As

1 previously instructed, the view of the
2 premises is not evidence, but it may help
3 you understand the evidence.

4 credibility. You are the sole
5 judges of the facts, the credibility of
6 the witnesses and the weight of the
7 evidence. To weigh the evidence, you
8 must consider the credibility of the
9 witnesses. You will apply the tests of
10 truthfulness that you apply in your own
11 daily lives. These tests include the
12 appearance of each witness upon the
13 stand; his or her manner of testifying;
14 the reasonableness of the testimony; the
15 opportunity he or she had to see, hear
16 and know the things concerning which he
17 or she has testified; his or her accuracy
18 of memory, his or her frankness or lack
19 of it, his or her intelligence, and his
20 or her interests and bias, if any;
21 together with all of the facts and
22 circumstances surrounding the testimony.

23 Applying these tests, you will
24 assign to the testimony of each witness
25 such weight as you deem proper. You are

1 not required to believe the testimony of
2 any witness simply because it is under
3 oath. You may believe or disbelieve all
4 or any part of the testimony of any
5 witness. You should decide what
6 testimony is worthy of belief and what
7 testimony is not worthy of belief.

8 Eyewitness means a person who
9 observes another person at or near the
10 scene of an offense. Some things you may
11 consider in weighing the testimony of an
12 identifying witness are: The capacity of
13 the witness, that is the age,
14 intelligence, defective senses, if any,
15 and the opportunity of the witness to
16 observe. The witness's degree of
17 attention at the time he or she observed
18 the offender; the accuracy of the
19 witness's prior description or
20 identification, if any; whether the
21 witness had observed the defendant in the
22 past; the interval of time between the
23 event and the identification and all
24 surrounding circumstances under which the
25 witness has identified the defendant.

1 Evidence was received that some
2 witnesses had been convicted of a
3 criminal offense. If you find that a
4 witness was convicted of a criminal
5 offense, you may consider that evidence
6 solely for the purpose of testing the
7 witness's credibility and the weight to
8 be given that witness's testimony. It
9 cannot be considered for any other
10 purpose.

11 You heard a tape-recorded statement
12 of Kareem Gilbert. This recorded
13 statement was admitted for the sole
14 purpose of impeaching the witness. The
15 statement is not testimony and may only
16 be used to evaluate the credibility of
17 the witness.

18 The testimony of the defendant. It
19 is not necessary that the defendant take
20 the stand in his own defense. He has a
21 constitutional right not to testify. The
22 fact that he did not testify must not be
23 considered for any purpose.

24 Expert witnesses. Definition.

25 Generally a witness may not express an

1 opinion, however one who follows a
2 special line of work may express their
3 opinion because of his or her education,
4 knowledge and experience. Such testimony
5 is admitted for whatever assistance it
6 may provide to help you to arrive at a
7 just verdict.

8 Questions have been asked in which
9 an expert witness was permitted to assume
10 that certain facts were true, and to give
11 an opinion based upon such assumption.

12 You must determine whether the assumed
13 facts upon which the expert based their
14 opinion are true. If any assumed fact
15 was not established, you will determine
16 its effect upon the opinion of the
17 expert.

18 As with other witnesses, upon you
19 alone rests the duty of deciding what
20 witness -- what weight should be given to
21 the testimony of the expert. In
22 determining its weight, you may take into
23 consideration their skill, experience,
24 knowledge, veracity, familiarity with the
25 facts of this case, and the usual rules

1 for testing credibility and determining
2 the weight to be given to the testimony.

3 Stipulations have occurred in this
4 matter. They've made several
5 stipulations. They have stipulated that
6 the Cincinnati Police collected Exhibit
7 15, a buccal swab from the defendant,
8 Ruben Jordan. Further proof of that fact
9 is unnecessary. Further weighing of this
10 fact is not necessary. The jury is
11 instructed to accept that as proven.

12 The parties have stipulated that
13 the defendant, Ruben Jordan, was indicted
14 on May 24th, 2010. They have stipulated
15 that Exhibit F is Kareem Gilbert's plea
16 agreement. They have also stipulated to
17 the prior convictions of the defendant,
18 Ruben Jordan, for the following offenses
19 in Hamilton County, Ohio, Court of Common
20 Pleas. Possession of drugs on
21 February 6th, 2004; preparation of
22 marijuana for sale on December 14th,
23 2000; illegal processing of drug
24 documents on October 17th, 1995;
25 aggravated trafficking of drugs on

1 March 19th, 1993; and drug abuse on May
2 the 1st, 1994.

3 with regard to Count 2, a prior
4 conviction is an element of the offense
5 of having a weapon while under a
6 disability. This stipulation was not
7 made to prove the character of the
8 defendant, but in order to show that the
9 defendant acted in conformity with that
10 character. And you may not consider it
11 to prove the character of the defendant
12 or to show that he acted in conformity
13 with that character.

14 The definition of complicity.

15 Complicity is an offense. Act in an
16 offense. Complicity in an offense means
17 the conduct of one who knowingly aids and
18 abets another for the purpose of
19 committing such an offense.

20 If you find beyond a reasonable
21 doubt that Ruben Jordan purposely aided,
22 helped, assisted, encouraged or directed
23 himself with another in the commission of
24 an offense, he is to be regarded as if he
25 were the principal offender and is just

1 as guilty as if he had personally
2 performed every act constituting the
3 offense.

4 when two or more persons have a
5 common purpose to commit a crime, and one
6 does one part and a second performs
7 another, those acting together are
8 equally guilty of the crime; however, the
9 mere association with one who perpetrates
10 an unlawful act does not render a person
11 a participant in the crime as long as his
12 act are innocent.

13 Complicity applies to the firearm
14 spec as well as the underlying criminal
15 charges. So that there -- so that where
16 one is acting in conformity with another
17 in the commission of an offense with the
18 use of a firearm, he is criminally
19 responsible for the firearm regardless of
20 whether he was the principal offender or
21 an unarmed accomplice.

22 Exhibits. A number of exhibits and
23 testimony related to them have been
24 introduced. You may consider whether the
25 exhibits are the same objects and in the

1 same condition as originally taken by the
2 deputies or the police officers. You
3 will determine what weight, if any, the
4 exhibits should receive in light of all
5 the evidence.

6 Alibi has been introduced here.
7 The defendant claims that he was at some
8 other place at the time the offense
9 occurred. This is known as alibi. The
10 word "alibi" means elsewhere or a
11 different place. If the evidence fails
12 to establish that the defendant was
13 elsewhere, such failure does not create
14 an inference that the defendant was
15 present at the time when, and at the
16 place where, an offense may have been
17 committed.

18 If after consideration of the
19 evidence of alibi, along with all the
20 evidence, you are not convinced beyond a
21 reasonable doubt that the defendant was
22 present at the time in question, you must
23 return a verdict of not guilty.

24 Count one, aggravated murder with
25 specifications. The defendant, Ruben

1 Jordan, is charged with aggravated
2 murder, in violation of Revised Code
3 2903.01(A) of the Ohio Revised Code.
4 Before you can find the defendant guilty,
5 you must find that beyond a reasonable
6 doubt that on or about the 31st of
7 October, 2008, and in Hamilton County,
8 Ohio, the defendant purposely, and with
9 prior calculation and design, caused the
10 death of victor Davis.

11 Purposely. Purpose to cause the
12 death of another is an essential element
13 of the crime of aggravated murder. A
14 person acts purposely when his specific
15 intention to cause a certain result. It
16 must be established in this case that at
17 the time in question there was present in
18 the mind of the defendant a specific
19 intention to cause the death of victor
20 Davis. Purpose is a decision of the mind
21 to do an act with a conscious objective
22 of producing a certain result or engaging
23 in specific conduct. To do an act
24 purposely is to do it intentionally and
25 not accidentally.

Purpose and intent mean the same thing. The purpose with which a person does an act is known only to himself unless he expresses it to others or indicates it by his conduct. The purpose with which a person does an act or brings about a result is determined from the manner in which it is done, the means or weapon used, and all the facts and circumstances in evidence.

Inference. Use of a deadly weapon. You may infer a purpose to cause the death of another with a natural or probable consequences of the defendant's act is to produce death, in light of all the surrounding circumstances. Such circumstances include the weapon used and its ability to destroy life. If you find that the defendant used a deadly weapon against another in a manner calculated to destroy life, the purpose to cause death may be, but is not required to be, inferred from the use of the deadly weapon. Whether an inference is made rests entirely with you.

Prior calculation and design means
that the purpose to cause a death was
reached by definite process of reasoning
in advance of the homicide, which process
of reasoning must have included a mental
plan involving studied consideration of
the method and the means or instrument
with which to cause the death. To
constitute prior calculation, there must
have been sufficient time and opportunity
for the planning of an act of homicide,
and the circumstances surrounding the
homicide must show a scheme designed to
carry out the calculated decision to
cause the death. No definite period of
time must elapse and no particular amount
of consideration must be given. But
acting on the spur of the moment or after
momentary consideration of the purpose to
cause the death is not sufficient.

Cause is an essential element of
the offense of aggravated murder. Cause
is an act which directly produces the
death of another and without which it
would not have occurred.

1 Deadly weapon means any instrument,
2 device or thing capable of inflicting
3 death and designed or specifically
4 adapted for use as a weapon, or
5 possessed, carried, or used as a weapon.

6 Capable of deadly weapon -- I'm
7 sorry. Capability of deadly weapon. A
8 deadly weapon is any instrument, device
9 or thing which has two characteristics.
10 The first characteristic is that it is
11 capable of inflicting or causing death.
12 The second characteristic is in the
13 alternative when the instrument, device
14 or thing was designed or specifically
15 adapted for use as a weapon, or it was
16 possessed, carried or used in this case
17 as a weapon.

18 These are questions of fact for you
19 to decide. The lesser included offense
20 to Count 1 is murder. Under 29 --
21 Revised Code 2903.02, murder is a lesser
22 included offense of aggravated murder.

23 Before you can find the defendant
24 guilty of murder, you must find beyond a
25 reasonable doubt that on or about the

1 31st day of October, 2008, and in
2 Hamilton County, Ohio the defendant
3 purposely caused the death of Victor
4 Davis. The offense of murder is
5 distinguished from aggravated by the
6 absence or failure to prove prior
7 calculation and design.

8 Findings on Count 1. If you find
9 that the State failed to prove beyond a
10 reasonable doubt any one of the essential
11 elements of the offense of aggravated
12 murder as charged in Count 1 of the
13 indictment, then your verdict must be not
14 guilty as to such charge according to
15 your findings.

16 Guilty as charged. If you find
17 that the State proved beyond a reasonable
18 doubt all the essential elements of the
19 offense of aggravated murder, your
20 verdict must be guilty as charged.

21 Guilty of a lesser included
22 offense. However, if you find that the
23 State failed to prove beyond a reasonable
24 doubt any one of the essential elements
25 of aggravated murder, or you're unable to

1 agree on a verdict, then your verdict
2 must be not guilty of that offense. And
3 in that event you will continue your
4 deliberations to decide whether the State
5 has proved beyond a reasonable doubt all
6 the essential elements of the lesser
7 included offense of murder.

8 Lesser included offense. If the
9 evidence warrants it, you may find the
10 defendant guilty of an offense lesser
11 than that charged in the indictment;
12 however, notwithstanding that right, it
13 is your duty to accept the law as given
14 to you by the Court, and if the facts and
15 the law warrant a conviction of the
16 offense charged in the indictment, namely
17 aggravated murder, then it is your duty
18 to make such a finding uninfluenced by
19 your power to find a lesser offenses.
20 This provision is not designed to relieve
21 you from the performance of an unpleasant
22 duty, it is included to prevent failure
23 of justice if the evidence failed to
24 prove the original charge, but does
25 justify a verdict for the lesser offense.

There is Specification 1 to Count

1. If your verdict is guilty of
aggravated murder or murder, you will
separately decide beyond a reasonable
doubt if the defendant, Ruben Jordan, had
on about his person or under his control
a firearm while committing the offense of
aggravated murder, or murder, and
displayed the firearm, brandished the
firearm, indicated that he possessed a
firearm, or used it to facilitate the
offense of aggravated murder or murder.
If your verdict is not guilty to murder
or aggravated murder, you will not
consider this specification.

Firearm means any deadly weapon capable of expelling or propelling one or more projectiles by an action of an explosive or combustible propellant.

24 Count 2 is having a weapon while
25 under disability under Ohio Revised Code

1 2923.13(A)(3). The defendant, Ruben
2 Jordan, is charged with having weapons
3 while under a disability, in violation of
4 2923.13. Before you can find the
5 defendant guilty, you must find beyond a
6 reasonable doubt that on or about the
7 31st day of October, 2008, and in
8 Hamilton County, Ohio, the defendant,
9 Ruben Jordan, knowingly acquired, had,
10 carried or used a firearm, to wit: a
11 firearm, and at the time the defendant
12 knew he was under indictment for or had
13 been convicted of an offense involving
14 the illegal possession of, sale of, use
15 of, administration of, distribution or
16 trafficking in any drug of abuse, to wit:
17 possession of drugs in Hamilton County,
18 Ohio, Court of Common Pleas, Case Number
19 80339977 on October 6, 2004, and
20 preparation of marijuana for sale in
21 Hamilton County, Ohio, Court of Common
22 Pleas, Case Number B006899, on
23 December 14th, 2000; and illegal
24 possession of drug documents in Hamilton
25 County, Ohio, Court of Common Pleas, Case

1 B955989 on October 17th, 1995; and
2 aggravated trafficking in drugs in
3 Hamilton County, Ohio, Court of Common
4 Pleas, Case Number B929170 on October 19,
5 1993; and drug abuse in Hamilton County,
6 Ohio, Court of Common Pleas, Case Number
7 13911528 on May 1st, 1991; and at the
8 time the defendant had not been relieved
9 from such disability.

10 All applicable definitions and all
11 the essentially elements of the offense
12 of having a weapon while under a
13 disability are described above.

14 Findings as to Count 2. If you
15 find that the State failed to prove
16 beyond a reasonable doubt any one of the
17 essential elements of the offense of
18 having a weapon while under a disability
19 as charged in Count 2 of the indictment,
20 then your verdict must be not guilty as
21 to such offense according to your
22 findings.

23 If you find that the State proved
24 beyond a reasonable doubt all the
25 essential elements of the offense of

1 having a weapon while under disability as
2 charged in Count 2 of the indictment,
3 your verdict must be guilty as to such
4 offense according to your finding.

5 There are multiple counts here.
6 So, if you find that the State proved
7 beyond a reasonable doubt all the
8 elements of any one or more of the
9 offenses charged in the separate counts
10 in the indictment, your verdict must be
11 guilty as to such offense or offenses
12 according to your findings.

13 Not guilty. If you find that the
14 State failed to prove beyond a reasonable
15 doubt any one of the essential elements
16 of any one or more of the offenses
17 charged in the separate counts in your
18 indictment, your verdict must be not
19 guilty as to such offense or offenses
20 according to your findings.

21 Consider the counts and
22 specifications separately. The charges
23 set forth in each count in the indictment
24 constitute a separate and distinct
25 matter. You must consider each count and

1 the evidence applicable to each
2 count separately, and you must state your
3 finding as to each count uninfluenced by
4 your verdict as to any other count.

5 The defendant may be found guilty
6 or not guilty of any one or all of the
7 offenses charged. The indictment charges
8 that the offenses took place on or about
9 October 31st, 2008. It is not necessary
10 that the State prove that the offenses
11 were committed on the exact days as
12 charged in the indictment. It is
13 sufficient to prove that the offenses
14 took place on a date reasonably near the
15 date claimed.

16 Before you can decide whether the
17 State of Ohio has proved beyond
18 reasonable doubt all of the essential
19 elements of the offenses with which the
20 defendant is charged, you must first
21 decide whether this is the correct --
22 counsel, can we stipulate to that? Mr.
23 Whalen?

24 MR. WHALEN: Yes, Your Honor.

25 THE COURT: So, the jury does not

1 have to consider whether these offenses
2 occurred in Hamilton County, because the
3 parties agree. Normally, venue is
4 something that the jury may have to, if
5 it's disputed. That it is not disputed
6 here. So, this did take place in
7 Hamilton County.

8 The verdict forms you will have
9 with you in the jury room include the
10 following, I'm going to read each of
11 those separately now. You will have with
12 you one, two, three, four, five sheets of
13 paper relating to the verdicts.

14 There is one verdict form that says
15 guilty as to Count 1, aggravated murder.
16 We, the jury, find the defendant, Ruben
17 Jordan, guilty of aggravated murder and
18 there are 12 signatures, and the
19 foreperson has a special place to sign.

20 If you find the defendant guilty of
21 aggravated murder, continue to the
22 verdict form for Specification 1.

23 Specification 1 states, we, the jury,
24 find the defendant, Ruben Jordan, guilty
25 of the Specification to Count 1,

1 aggravated murder, or the lesser included
2 offense of murder.

3 There is a separate form for guilty
4 as to Count 1, lesser included offense of
5 murder. We, the jury, find the
6 defendant, Ruben Jordan, not guilty of
7 aggravated murder, and guilty of murder,
8 a lesser included offense of aggravated
9 murder.

10 If you find the defendant guilty of
11 murder, continue to the verdict form for
12 Specification 1. I just read that to
13 you.

14 Counsel, I believe that applies to
15 both of them, correct?

16 MR. TIEGER: Yes, Your Honor.

17 THE COURT: In addition to that, it
18 does have the 12 lines for your
19 signatures and the place for the
20 foreperson.

21 Verdict form not guilty as to Count
22 1, aggravated murder or murder. We, the
23 jury, find the defendant, Ruben Jordan,
24 not guilty of Count 1, aggravated murder
25 and not guilty of the lesser included

1 offense of murder. It has the 12
2 signature lines and a place for the
3 foreperson.

4 Count 2. We, the jury, find the
5 defendant, Ruben Jordan, guilty or not
6 guilty of having a weapon while under a
7 disability. And should there not be a
8 verdict form for we, the jury, find the
9 defendant guilty of murder? I didn't --

10 MR. TIEGER: Judge, I think that
11 was the second one that you read.

12 THE COURT: As long as it was
13 covered.

14 MR. TIEGER: I believe it was,
15 Judge.

16 THE COURT: All the possibilities
17 have been covered, and you will have that
18 with you in your jury room. I will
19 explain to you who is to take care of
20 that and handle that.

21 when you have reached a verdict,
22 you will complete the forms that
23 correspond to your decision and sign the
24 verdict forms in ink.

25 Punishment. You may not discuss or

1 consider the subject of punishment. In
2 the event you find the defendant guilty,
3 the duty to determine the punishment is
4 placed by law upon the Court. We are
5 almost finished.

6 Just verdict. You must not be
7 influenced by any consideration of
8 sympathy or prejudice. It is your duty
9 to carefully weigh the evidence, to
10 decide all disputed questions of fact, to
11 apply the instructions of the Court to
12 your findings, and to render your verdict
13 accordingly. In fulfilling your duty,
14 your efforts must be to arrive at a just
15 verdict. Consider all the evidence and
16 make your finding with intelligence and
17 impartiality, and without bias, sympathy
18 or prejudice so that the State of Ohio
19 and the defendants -- defendant will feel
20 their case was fairly and impartially
21 tried.

22 If during the course of the trial
23 the Court said or did anything that you
24 consider an indication of the Court's
25 view on the facts, you are instructed to

1 disregard it.

2 Initial jury room conduct. The
3 Court has given you the instructions on
4 the law applicable in this case. I will
5 now instruct you on how to conduct your
6 deliberations and prepare your verdict.

7 When you go to the jury room, your first
8 function will be to select one of your
9 number to serve as foreperson. The
10 person you select to preside over your
11 deliberations does not have any greater
12 power, nor does that person's vote have
13 any more importance than others. He or
14 she serves the purpose of helping you
15 conduct your deliberations in an orderly
16 manner, and to give each of you the
17 opportunity to express your opinion. One
18 additional duty of the foreperson is to
19 see to it that the verdict forms and any
20 exhibits are turned to the court after
21 you have reached a verdict.

22 Your initial conduct upon entering
23 the jury room is a matter of importance.
24 It is not wise immediately to express a
25 determination, to insist upon a certain

1 verdict, because if your sense of pride
2 is aroused, you may hesitate to change
3 your position even if you later decide
4 you are wrong.

19 Questions. If during your
20 deliberations you have a question, it
21 should be discussed in the privacy of
22 your jury room. It should not reflect
23 the status of your deliberations, meaning
24 it should not be that we are -- we have
25 got six -- we are deadlocked six to six,

1 or we got nine going one way and three
2 going the other way. That's an improper
3 thing to put in your question. It should
4 be reduced to writing, so that there will
5 be no misunderstanding as to what you
6 request, and it should then be delivered
7 to the bailiff who will submit it to the
8 Court, and the foreperson will do that,
9 will write the question and serve it to
10 the bailiff.

11 It may be difficult to remember all
12 the evidence or the law. If you disagree
13 as to the evidence, as to the law, the
14 Court may under certain circumstances
15 furnish such information. Do not make a
16 request at this moment.

17 If after you return to the jury
18 room, you require such information, the
19 foreperson should reduce the request to
20 writing indicating specifically what you
21 request. Such communication must be
22 delivered to the bailiff who will submit
23 it to the Court.

24 Also, you have engaged in note
25 taking. Some of you decided to take

notes. All notes are confidential and
for the consideration of the jury only.
Each note taker will leave that note with
the bailiff during recesses and until
deliberations begin. So, at that time
you will be allowed to take your notes to
the jury room. All notes will be
returned to the bailiff for destruction
at the time the jury is discharged.

Also, you should be -- I should
tell you that your notes are not to be
used as though they were fact, and no
juror is required to believe or
disbelieve your notes. They're for your
purposes only and for purposes of
discussion.

A juror selected as an alternate is
not permitted to participate in a jury's
deliberation, for the three of you who
have sat there patiently. But, there may
be an occasion -- we have not -- since
the verdict has not been reached, and
because this may take several days, we're
not sure, that means that one of you may
be pressed to serve as jurors,

1 deliberating jurors.

2 So, you will be called in if one of
3 the jurors is unable to complete his or
4 her service due to illness or some other
5 misfortune or because there is -- some of
6 you have indicated that you cannot remain
7 past wednesday. The alternate jurors
8 will remain in the courthouse under the
9 supervision of the bailiff, but will not
10 accompany the jury to the jury room or
11 participate in deliberations unless
12 directed by the Court.

13 The alternate jurors continue to be
14 part of the jury panel while the jury is
15 deliberating, until the jury has reached
16 a verdict. The alternate jurors cannot
17 discuss the case with anyone or disclose
18 to anyone how they would have voted.

19 After the jury has returned its
20 verdict and the verdict is announced in
21 open court, the alternate jurors will be
22 released from all restrictions. So,
23 alternate jurors, it will not be
24 necessary for you to serve any further.
25 And you are not to discuss this case or

1 tell anyone how you would have voted
2 until the jury has reached -- has
3 returned a verdict.

4 On behalf of the public and
5 parties, the Court expresses appreciation
6 for your service in performing this most
7 important function, and I think you may
8 be on standby. So, I'm going to suggest
9 they be released to the Jury Commission,
10 and they have agreed that they will not
11 discuss this case.

12 MR. TIEGER: Judge, I thought they
13 would have to be, not necessarily
14 sequestered, but kept together. I don't
15 know what room the Court would have for
16 them, but just not to discuss the case.
17 But I don't know if they can -- certainly
18 want to make it as comfortable for them
19 by way of --

20 THE COURT: So, you object to --

21 MR. TIEGER: -- way of magazines or
22 books or something.

23 THE COURT: So, that means that
24 they can not return to the Jury
25 Commission office. Normally kept

1 separated from the Jury Commission
2 office.

3 MR. TIEGER: I'm sorry, Judge?

4 THE COURT: Keep them separate from
5 the Jury Commission office?

6 MR. TIEGER: If they could just
7 find a room somewhere for them, and
8 certainly -- yeah.

9 THE COURT: They might even have a
10 TV in there. We'll take care of that.

11 At this time, the Court will place in
12 your possession the exhibits and the
13 verdict forms. The foreperson will
14 retain possession of these records,
15 including the verdicts and return them to
16 the courtroom. The foreperson will see
17 that your discussions are orderly and
18 that each juror has the opportunity to
19 discuss the case and to cast his or her
20 vote. Otherwise, the authority of the
21 foreperson is the same as any other
22 juror.

23 Until your verdict is announced in
24 open court, you are not to disclose to
25 anyone, that includes the bailiff, the

1 Judge, certainly the parties and the
2 litigants and participants, to anyone
3 else, the status of your deliberations or
4 the nature of your verdict.

5 After you have retired, select a
6 foreperson. And whenever all 12 jurors
7 agree upon a verdict, you will sign the
8 verdict in ink and advise the bailiff.

9 You will then be returned to your
10 courtroom. I think it's appropriate at
11 this time to -- maybe they can select a
12 foreperson, or should -- Counsel, do you
13 think they should be going to lunch?

14 MR. TIEGER: Judge, whatever is
15 comfortable for them.

16 THE COURT: I'm going to ask the
17 jury. Would you prefer to go to lunch
18 now and come back and choose a
19 foreperson? All right. Some saying yes
20 adamantly. At this time, you will return
21 to the courtroom then at 12:30. You are
22 released now for lunch.

23 Remember your admonition that you
24 are not to discuss this case among
25 yourselves at lunch, as tempting as it

1 may be, and you understand what the
2 admonition is. okay. All right. At
3 this time we'll rise for the jury.
4 They're going to go to lunch.

5 (The jury leaving the courtroom at
6 11:30 a.m.)

7 THE COURT: Exhibits and
8 stipulations, all this will remain in the
9 courtroom until they come back at 12:30,
10 and then we'll take that in to them.

11 Counsel, anything else?

12 MR. TIEGER: No, Judge.

13 MR. WHALEN: Your Honor, the
14 instructions that the Court will give the
15 jury during the day, including when they
16 are gone for the evening, my client will
17 waive his presence while you give them
18 the instructions. I will be here.

19 THE COURT: Instructions when?

20 MR. WHALEN: At the end of day.

21 THE COURT: At the end of today.
22 okay.

23 MR. WHALEN: Or when they go to
24 lunch. I told him if they have a
25 question or reach a verdict --

3 MR. TIEGER: I guess our point
4 would be that we don't -- and maybe it's
5 the same thing as Bill is saying, but
6 Megan and I don't need to be here. For
7 instance, when they come back from lunch
8 they can return to the jury room at 12:30
9 without us being here. And if they don't
10 get a verdict today -- I mean, I don't
11 have a problem if the Court releases them
12 with the admonishment.

17 MR. TIEGER: And if you want us
18 here, we'll be here, but --

22 || MR. WHALEN: All right.

23 MS. SHANAHAN: Your Honor, a couple
24 of things. And just with anybody's
25 schedules, just a thought, because we do

1 have some jurors with time constraints.
2 Can we perhaps let them go as late as
3 they want, within reason deliberating
4 today? I mean, like not cut them off at
5 3:30 or 4?

6 THE COURT: I think five is
7 reasonable, usually.

8 MR. TIEGER: Five is fine.

9 THE COURT: 5:00.

10 MS. SHANAHAN: Rather than cut them
11 off and send them away early.

12 THE COURT: Let them know we are
13 going to -- they can deliberate until
14 five.

15 MR. TIEGER: Or just don't say
16 anything and maybe at quarter till, if
17 they are still here at 4:45, say unless
18 you're close, we are going to cut you
19 loose for the day in a few minutes.

20 THE COURT: All right. I can do
21 that, too.

22 MS. SHANAHAN: Page 11, one thing I
23 would want to add. Under murder, the
24 second line. The offense murder is
25 distinguished from aggravated. You just

1 have plugged in murder. It doesn't say
2 aggravated what. And then, similarly, on
3 Page 12 -- you ready, Scott?

4 THE COURT: Page 12.

5 MR. BRENNER: I didn't see where it
6 was on 11.

7 MS. SHANAHAN: Page 11 at the
8 bottom of murder.

9 THE COURT: Definition -- last
10 sentence of murder.

11 MR. TIEGER: She wrote it in,
12 Scott.

13 MR. BRENNER: Okay.

14 MS. SHANAHAN: And then on Page 12,
15 the third line from the bottom, if your
16 verdict is not guilty, I think we should
17 plug in aggravated murder or murder, you
18 will not consider the specification.
19 It's just for clarification purposes for
20 them.

21 MR. BRENNER: Okay.

22 THE COURT: I don't object to that.

23 MR. TIEGER: We are good then,
24 Judge.

25 THE COURT: Okay. Fine.

1 MR. WHALEN: Your Honor, can we
2 come back in chambers for a moment?

3 (Luncheon recess.)

1 AFTERNOON SESSION January 24, 2011
2 (The jury entering the courtroom at
3 3:30 p.m.)

4 THE COURT: You may all be seated.
5 Thank you. And will the foreperson
6 please stand, okay. And this is on the
7 matter of State vs. Ruben Jordan, Case
8 Number B-003262. And, ma'am, state your
9 name.

10 JUROR MESSERSCHIMTT: Beverly
11 Messerschmitt.

12 THE COURT: And you did submit this
13 question, these three questions to the
14 Court?

15 JUROR MESSERSCHIMTT: Yes, I did.

16 THE COURT: As to the first
17 question, if we find Ruben Jordan guilty
18 of aggravated murder, can we find him not
19 guilty on Specification 1 to Count 1?
20 And the answer to that is yes.

21 Will this discredit issue one? The
22 answer to that is no. The third question
23 is: Does it matter who shot the gun?
24 And the answer to that is to read and
25 follow the instructions on complicity.

1 And with that, I will relieve the
2 jury so you can continue to deliberate.
3 Thank you.

4 (The jury leaving the courtroom at
5 3:31 p.m.)

6 (Jury deliberating.)

7 THE COURT: We ready to bring in
8 the jury?

9 MR. WHALEN: Yes, Your Honor.

10 THE COURT: Counsels, do you object
11 to the alternates who have been separated
12 sit in the usual seats?

13 MR. TIEGER: That's fine, Judge.

14 THE COURT: Because they have to be
15 separated -- they cannot be released
16 until the verdict is read in open court.

17 MR. TIEGER: Yes, Judge. I was
18 hoping we wouldn't forget about them.

19 THE COURT: All right. Then, so
20 let's bring the jury in.

21 (The jury entering the courtroom at
22 4:12 p.m.)

23 THE COURT: Thank you. You may all
24 be seated. And to the foreman, please
25 stand, and has the jury reached a

1 verdict?

2 JUROR MESSERSCHIMTT: Yes, we have,
3 Your Honor.

4 THE COURT: All right. I'm going
5 to pass this back to the foremen and let
6 her read the verdict in open court.

7 JUROR MESSERSCHIMTT: We, the jury,
8 find the defendant, Ruben Jordan, guilty
9 of aggravated murder. We, the jury, find
10 the defendant, Ruben Jordan, guilty of a
11 specification to Count 1, aggravated
12 murder or lesser included offense of
13 murder. We, the jury, find the
14 defendant, Ruben Jordan, guilty of Count
15 2, having weapons under disability.

16 THE COURT: All right. Thank you.
17 You may be seated. Would you like to
18 poll the jury, Counsel?

19 MR. WHALEN: Yes, Your Honor.

20 THE COURT: All right. I need,
21 please, the list of the names. I know
22 that Juror Number 1 --

23 MR. TIEGER: Judge, I think it is
24 essentially just a short statement that
25 you would read. You heard the verdict

1 read, is that your true and accurate --

2 THE COURT: Right. I'm going to do
3 that. Just a second.

4 MR. TIEGER: You could refer to
5 them by Juror Number 1, 2 and so forth
6 instead of by name.

7 THE COURT: Having heard that jury
8 verdict, I would like to ask Jury Number
9 1, is that your -- is that your decision,
10 your verdict?

11 JUROR OBST: Yes.

12 THE COURT: Juror number 2?

13 JUROR MCKINNEY: Yes.

14 THE COURT: Juror 3?

15 JUROR MESSERSCHIMTT: Yes.

16 THE COURT: Juror 4?

17 JUROR KEMPER: Yes.

18 THE COURT: Juror Number 5?

19 JUROR SHELTON: Yes.

20 THE COURT: Juror Number 6?

21 JUROR FITZGERALD: Yes.

22 THE COURT: Juror 7?

23 JUROR CISKO: Yes.

24 THE COURT: Juror 8?

25 JUROR COFFMAN: Yes.

1 THE COURT: Jury Number 9?

2 JUROR BURCK: Yes.

3 THE COURT: Juror 10?

4 JUROR RICKETTS: Yes.

5 THE COURT: Juror Number 11?

6 JUROR BESSEY: Yes.

7 THE COURT: Juror Number 12?

8 PROSPECTIVE JUROR 12:

9 JUROR BURKE: Yes.

10 THE COURT: Thank you for the
11 alternates, and thank you for the jury
12 for your service here today.

13 Many times -- you are released from
14 the obligation to not talk to anyone you
15 want to speak to about this matter. Many
16 times attorneys would like for you to
17 remain, because it's for them a learning
18 experience, and so you are free to leave,
19 though you don't have to. We want to
20 thank and excuse the alternates also who
21 remain in this matter.

22 This matter is adjourned. Jury may
23 rise.

24 (The jury leaving the courtroom at
25 4:15 p.m.)

1 THE COURT: You may be seated.

2 Counsel, at this time there will be a
3 date for sentencing, or --

4 MR. WHALEN: We set a date for
5 sentencing.

6 THE COURT: Yes. It does not
7 need -- did you want to prepare anything
8 in mitigation of that sentence?

9 MR. WHALEN: I do, yeah, but I
10 guess --

11 THE COURT: How long did you --

12 MR. WHALEN: There has to be a
13 presentence investigation.

14 MR. TIEGER: I know. There
15 probably should be a victim impact
16 statement as well. I think two weeks or
17 so should be fine.

18 THE COURT: If they can do that.
19 I'm going to say three.

20 MR. TIEGER: Okay.

21 THE COURT: Three weeks. Do you
22 want this? All right. So, what's that
23 date? Dee-Dee, get the date, please.
24 Did you get a date?

25 MR. WHALEN: Yes.

1 THE COURT: All right.

2 MS. SMITH: February 15th.

3 MR. WHALEN: That's fine.

4 THE COURT: All right.

5 MR. TIEGER: Judge, I'm assuming
6 the defendant would be remanded without
7 bond?

8 THE COURT: He is remanded without
9 bond pending sentencing. And at this
10 time we are adjourned, are we not? That
11 takes care of that.

12 (Proceedings continued for
13 sentencing until February 15, 2011.)

14

15

16

17

18

19

20

21

22

23

24

25

1 CERTIFICATE

2 I, SHERI D. RENKEN, RPR, the
3 undersigned, an official Court Reporter for the
4 Hamilton County Court of Common Pleas, do hereby
5 certify that at the same time and place stated
6 herein, I recorded in stenotype and thereafter
7 transcribed the within 985, and that the
8 foregoing Transcript of Proceedings is a true,
9 complete, and accurate transcript of my said
10 stenotype notes.

11 IN WITNESS WHEREOF, I hereunto set my
12 hand this 15th day of January, 2012.

13
14 _____
15 SHERI D. RENKEN, RPR
16 Official Court Reporter
17 Court of Common Pleas
18 Hamilton County, Ohio
19
20
21
22
23
24
25